

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application for the mandates in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution.

Case No.CA/Writ/0183/2026

1. Hettiarachchige Don Damien Prince Roach Gunathilake,
2. Heetiarachchige Don Anthony Raja Gunathilake,

Partners,

Subhash and Churchill Car Center,
No.465, Ganahena,
Battaramulla.

PETITIONERS

Vs.

1. Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.
2. Kavinda De Zoysa,
Chairman – Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colomb 01.
3. M. K. C. Senanayake,
Ex-Officio Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

4. Jehaan Ismail,
Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

5. A. K. L. Illesinghe.
Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

6. R. M. P. Rathnayake,
Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

7. J. D. N. Gunasekara,
Independent Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

8. Thulci Aluwihare,
Independent Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

9. Sharmini Ratwatte,
Independent Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

10.Dharshan Jayaratne.
Independent Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

11.Sunimal Weerasooriya,
Independent Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

12.Ananda Jayawardane,
Independent Non – Executive Director,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

13.Janaki Senanayake Siriwardane,
Secretary to the Board Secretary,
Bank of Ceylon,
No.01, BOC Square,
Bank of Ceylon Mawatha,
Colombo 01.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Petitioner is represented by Counsel but not marked in the appearance list.

Suren Fernando with Khyah Wikramanayake instructed by Subhani Nanayakkara for the 1st & 2nd Respondents.

Written Submissions: By the Petitioner Not filed.
By the Respondents on 30/03/2026.

Supported On : 19/03/2026.

Order On : 28/04/2026.

Dr. Sumudu Premachandra J.

1] The Petitioners are seeking to halt a public auction of their mortgaged properties by the Bank of Ceylon (the 1st Respondent). They argue that the Bank's resolution to auction these assets is illegal and unreasonable, particularly because the Petitioners have made significant efforts to settle their debts despite facing economic hardships triggered by the Easter Sunday attacks, the Covid-19 pandemic, and subsequent national political unrest.

2] They prayed that this Court be pleased to: -

- a) Issue notices to the respondents;
- b) Grant an interim order staying and/or restraining from selling the properties described in the schedule to the petition by way of public auction on 19/03/2026;
- c) Issue an order to the 1st respondent to tender a correct Statement of Account mentioning the correct outstanding on the said Mortgage Bond marked "C";
- d) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the Resolution marked "E" passed by the Directors of the 1st respondent bank to sell the properties described in the schedule to the Petition;
- e) Grant and issue a mandate in the nature of a Writ of Prohibition preventing the 1st respondent bank from selling the properties described in the schedule to the Petition by way of public auction;
- f) Grant costs of this application and;
- g) Grant such other and further reliefs as to Your Lordships' Court shall seem meet.

3] The history shows that the Petitioners were granted rescheduled term loans in 2021 totaling over Rs. 40 million by the Respondent Bank. While they initially maintained payments, the economic crisis led to arrears. However, the Petitioners emphasize their "bona fides" (good faith) by highlighting that they have paid approximately Rs. 9.4 million since the Bank's resolution was adopted. Furthermore, they point out that they have a deposit of over Rs. 2.8 million with the Bank, which could be set off against their arrears, yet the Bank has allegedly moved towards auction without crediting these factors.

4] Facts further reveal that the Petitioners had leased their property to Premium Car Solutions (Pvt) Ltd for a monthly rent of Rs.500,000, which was supposed to be paid directly to the Bank to settle the loan. The lessee defaulted on these payments starting in October 2025, leading the Petitioners to terminate the lease in March 2026. They argue that the Bank was informed of these circumstances but continued with the auction process regardless, failing to account for the property's high market value estimated at Rs.169 million which far exceeds the outstanding debt.

5] In these circumstances, the Petitioners are praying for Writs of Certiorari and Prohibition to quash the Bank's resolution and prevent the auction from proceeding. They argue that the sale is "ultra vires" (beyond legal authority) and fails to consider the current market value or the substantial part-payments already made.

6] On 19/03/2026, the case was supported for an interim stay of auction, which was scheduled at 12 noon on the very same day, restraining the Bank from selling the properties until the case is fully heard, claiming that an immediate sale would cause "grave and irreparable loss" to their business and livelihoods. However, the court did not incline to grant a stay on the very same day and fixed this matter for an interim stay and issuance of formal notices. Further, the learned Counsel for the Respondents posed preliminary objections with regard to the maintainability of the action and vehemently objected to the interim stay of the auction and issuance of formal notices.

7] The 1st Respondent raises several preliminary objections, asserting that the Petitioners have failed to comply with Rule 3(1)(a) of the Court of Appeal Rules by not annexing certified copies of essential documents, such as the Section 21 Resolution and Section 22 Notices. More importantly, the Bank accuses the Petitioners of fraudulent suppression of material facts. Specifically, they claim the Petitioners falsely stated that they only learned of the March 19th auction via a late letter, when in reality, the Bank had attempted delivery on multiple earlier occasions, which the Petitioners allegedly refused to accept.

8] The Respondents mentioned that the Petitioners were given ample opportunity to pay the debt, but the loan was defaulted on by the Petitioner with broken promises.

9] The Respondent Bank says that the mortgage bond No. 4082 was executed in 2021, and despite multiple auction attempts in January 2024 and October 2025, the 1st Respondent graciously rescheduled these sales after the Petitioners provided undertakings to settle the debt. However, the Bank states the Petitioners failed to honour these agreements. By March 18/03/2026, the total outstanding debt had reached Rs.42,927,380.24, and the Respondent Bank showed that the Petitioners' claims of having sufficient savings to cover arrears were factually incorrect and wouldn't even cover the accrued interest.

10] The 1st Respondent concludes that the Petitioners have not come before the Court with "clean hands" and have demonstrated mala fides (bad faith) through both their suppression of facts and their violent conduct during the legal process. The Bank asserts its right under the Bank of Ceylon Ordinance to recover public funds and argues that the Petitioners would not suffer irreparable harm, as any excess funds from a sale would be returned to them. Consequently, the Bank prays that the court dismiss the application in limine (at the threshold) and award punitive costs against the Petitioners.

11] I now consider the merits of this application. The Respondents have taken 3 preliminary objections. Firstly, the Petitioners failed to follow the mandatory requirements of Rule 3(1) (a) of the Court of Appeal (Appellate Procedure) Rules. It is significant that failure to comply with Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990, is fatal to the application. The Rule says;

*“3. (1) (a) Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and **shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later.** Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero motu or at the instance of any party, dismiss such application.” [Emphasis is added]*

12] It is clear that this rule requires that applications be accompanied by the originals or duly certified copies of material documents. Otherwise, it cannot be treated as a valid application before the court of law. In this application the gazette notification sought to be quashed, marked as “E”, which relates to the auction notice “H”, and has been certified only by an attorney at Law as a true certified copy.

13] This gazette is issued by the 1st Respondent, Public Bank, and is therefore deemed to be a public document. Mode of Proof of such documents has been mentioned in Section 2 of the Proof of Public Documents Ordinance, No. 12 of 1864. It enacts;

*“2. Whenever it shall be necessary for any person to adduce proof in any Court of Justice, or before any person now or hereafter having, by law or consent of parties, authority to hear, receive, and examine evidence of the contents of any book or document in any public office or in charge of any public officer, **he shall only produce a copy or extract therefrom, signed and certified by the officer to whose custody the original is intrusted, and such copy or extract shall be admissible in evidence in such court, or before such person, in place of the original.***

Provided that it shall be lawful for the Judge, or person presiding in such court, or such other person as aforesaid, to require (upon his being satisfied that in any particular cause or inquiry such production is necessary for the ends of justice) that the original of such book or document should be produced in addition to the copy as aforesaid.” [Emphasis is added]

14] The sections 76 and 77 of the Evidence Ordinance show the manner in which certified copies are obtained. Those sections are reproduced below for clarity;

“76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation –

Any officer who, by the ordinary course of official duty, is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.”

15] Thus, it is clear that the person who signed (Attorney at Law) and certified “E” as a “True Copy”, cannot be treated as a competent person to issue such a copy. Thus, the objection with regard to noncompliance with Appellate court rules must be upheld.

16] In the case of **Brown & Co. Ltd. and Another v. Ratnayake, Arbitrator and Others** [1994] 3 SLR 91, Bandaranayake, J. considered the issue in hand and decided as follows;

“Rule 46 of the Supreme Court Rules of 1978 requires the petition to be supported by affidavit and to be accompanied by original or duly certified copies of documents material to the case in the form of exhibits. The burden of presenting a proper application is on the party that seeks the intervention of the Court. The procedure is specified for this threshold stage. The Rule regulates the mode of enforcing a legal right. The petitioner has to tender all relevant material to the Court in order to invoke its jurisdiction. If he fails to do this there is a failure to comply with a substantial aspect of the Rule. The fact that the Court is empowered by Article 140 to inspect and examine the record does not absolve the petitioner of his duty to invoke jurisdiction properly.

The fact that the record was subsequently made available to court is not an excuse for failure to comply with basic requirements of the Rule. One cannot claim a right to proceed to the next step without compliance with a valid invocation or jurisdiction in the first place. Such would lead to uncertainty, unreasonableness and oppressive results. In this sense the rule is mandatory.”

17] Further, in **Shanmugavadivu v. Kulathilake**, [2003] 1SLR 215, Bandaranayake, J (as then she was) stressed the necessity of attaching material documents. Her Ladyship notes;

*“On numerous occasions the Supreme Court as well as the Court of Appeal have held that the **compliance of the Supreme Court Rules and the Court of Appeal Rules is imperative**. In a situation where an application was made to the Court of Appeal without the relevant documents being annexed to the petition and the affidavit, but has stated the reason for such inability and sought the leave of the Court to furnish such documents on a later date, the Court could have exercised its discretion and allowed the petitioner to file the relevant documents on a later date. However, on this occasion, as pointed out earlier, no such leave was sought by the appellant and in the circumstances, **the Court of Appeal could not have exercised its discretion in terms of Rules 3(1) (a) and 3(1)(b) of the Court of Appeal (Appellate Procedure) Rules.**”[Emphasis is added]*

18] In this regard, the Respondents highlighted and tendered the resolutions dated 22/12/2023 and 19/09/2025 which had not been produced by the Petitioner (later produced by the Respondents as 1R1(a) and 1R2(a)). The Respondent claimed that the Petitioners had suppressed material facts and

therefore the application should be dismissed in limine. These two documents prove that there were two notices of sale that were not materialised.

19] In **Namunukula Plantations Limited vs Minister of lands and others**, C.A. Application No. 663/2005, Decided on: 13/03/2012, SALEEM MARSOOF J., held the result if material facts were suppressed as;

*“It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would **undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case.** In other words, he owes a duty of utmost good faith (*uberrima fides*) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”* [Emphasis is added]

20] These documents show that the Petitioners have habitually defaulted on loan repayments despite multiple extensions and "gracious gestures" from the Respondent Bank in 2023 and 2025. It is clear that the loan was defaulted several times despite several reschedules were given. The section 15 of the Bank of Ceylon Ordinance states;

“15. Where default is made in the payment of any sum due on any loan, overdraft, advance or other accommodation granted on the mortgage of movable or immovable property, whether that sum is due on account of principal or interest or both, default shall be deemed to have been made in respect of the whole of the unpaid portion of that loan, overdraft, advance or other accommodation and the interest due thereon up to date.”

21] Section 17 of the Bank of Ceylon Ordinance says that when a default is made, the Bank can take possession of the mortgaged property, or if not, under Section 19 of the said Ordinance, the resolution can be passed for the sale of the property in a public auction. It says;

“19. Subject to the provisions of section 20 the board may by resolution to be recorded in writing authorize any person specified in the resolution to sell by public auction any movable or immovable of property mortgaged to the bank as security for any loan, overdraft, advance or other accommodation in respect of which default has been made in order to recover the whole of the unpaid portion of such loan, overdraft, advance or other accommodation, and the interest due thereon up to the date of the sale, together with the moneys and costs recoverable under section 26.”

22] Thus, the decision to sell property in the public auction is well within the law. Since ample time has been given to repay the loan through rescheduling, we don't see any unreasonableness on the part of the Respondents. The Petitioners have suppressed the material facts and failed to observe Rule 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990. However unfavourable, the Petitioners ought to have disclosed such materials. The Respondents say that the Petitioner refused to accept the notice of auction. By suppressing the material facts and the conduct and the abusive behaviour, which are proven by 1R8, and the said cumulative factors attract the dismissal of the application and refusal of the interim stay of the auction with costs.

23] In the above circumstances, we uphold the preliminary objections. We dismissed the application and refused to issue formal notions and an interim stay of the auction. The Petitioners shall pay Rs. 100,000/- as costs of this application summarily assessed.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL